United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: July 8, 2003

TO : Victoria E. Aguayo, Regional Director
William M. Pate, Jr., Regional Attorney
James A. Small, Assistant to the Regional Director
Region 21

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Riverside Community Hospital 518-4020-6700
Case 21-CA-35537 518-4070-5000

This case was submitted for advice as to whether the Employer violated Section 8(a)(2) by not offering to enter into a "neutrality agreement" with one union (CNA) while the Employer had entered into a private election agreement with another union (SEIU), when CNA requested that certain organizing "conditions" apply to it in return for certain commitments it was willing to make. We conclude that the Employer did not violate Section 8(a)(2), because CNA did not offer to enter into the same overall election procedure agreement as did SEIU, wherein SEIU made commitments to the Employer that CNA did not express a willingness to make. Accordingly, the charge should be dismissed, absent withdrawal.

Briefly, SEIU and the Employer's parent corporation entered into a global settlement in late 2002 of a labor dispute at a San Jose hospital and of unfair labor practice charges. As part of that settlement, the parties signed an election procedure agreement (the Agreement) for the parent corporation's hospitals which set forth an organizing and election timetable, agreed-upon bargaining units, the provision of employee names and addresses to SEIU, rules for access, and an election procedure. SEIU, in return, gave concessions such as restricting organizing to a schedule that was more convenient to the Employer's parent corporation and its affiliated hospitals, and SEIU has indicated that it waived the right to organize the employees of other parent corporation hospitals in other states. Both parties agreed not to make disparaging remarks about the other.

On about December 5, 2002, pursuant to the Agreement, a "joint information sheet" (the Sheet) was distributed to Employer employees, announcing the existence of the Agreement, describing the election procedure, and setting forth 11 "standards of conduct." On about December 20,

after it obtained the Sheet, CNA sent a letter to the Employer, captioned "request for equal treatment for CNA in the ongoing organizing campaign." The letter paraphrased only 7 of the 11 "standards of conduct" set forth in the Sheet, asserted that CNA understood that SEIU had made certain "commitments" in exchange for those "conditions," and offered to make the commitments which CNA described in exchange for those same 7 "conditions." The letter requested that the Employer confirm in writing that the 7 "rules" would apply in return for the commitments CNA said it was willing to make in the letter. The Employer did not respond.

We agree with the Region that neither the Employer's refusal to enter into the agreement proposed in CNA's letter, nor its failure to offer to enter with CNA into the same Agreement that it had bargained with SEIU, violated Section 8(a)(2). While CNA was aware of the existence of the Agreement which was the basis of the conditions and commitments set forth in the Sheet, and which contained additional commitments on behalf of SEIU, CNA did not offer to make whatever commitments SEIU had made in the Agreement in exchange for whatever Employer commitments were also forth therein. Instead, CNA picked and chose even amongst the Employer "conditions" and SEIU "commitments" set forth in the Sheet. In these circumstances, where CNA had not stated a willingness to enter into the same commitments/waivers of its rights that SEIU had made, we conclude that the Employer was not obligated to enter into CNA's "offer" set forth in the December 20 letter, or to voluntarily offer to enter into an agreement with the same terms as its Agreement with SEIU. See, e.g., Viejas Casino, Case 21-CA-33117, Advice Memorandum dated December 30, 1999; Westin Diplomat, Case 12-CA-22026, Advice Memorandum dated April 19, 2002.

B.J.K.